Q. Those words, Mr. Longstreth, Marvel is bound by the holding company indentures, did you see that?

MR. FRIEDMAN: The witness was looking at a document.

MR. CLARK: Yes.

Q. Yes, and I invite you to find those words in there for me. Not some other words that you construe, but those words.

A. Those precise words --

Q. Yes.

A. -- are not in this shelf registration.

Q. Or in anything else that you've read?

A. Nothing else that I have read.

Q. Is there some SEC rule that we ought to look to that requires disclosure of a registrant -- in a registrant's filing, that the registrant is not bound by a particular contract?

A. Yes.

Q. What rule is that?

A. It's the rule that you can't tell half truths.

Q. 10b-5?

A. 10b-5.

Q. That's it?

A. Yes.

Q. Let me ask you, in your experience, have you ever seen an SEC filing by a public company in which the public company listed, for the world to see, all of the contracts that it was not a party to; have you ever seen that kind of a disclosure?

A. I don't think so.

Q. I don't think so.

Now, question 5 -- see, we're getting there.

In the beginning of your answer to question 5, you say, and you said it earlier, that there was no benefit to Marvel from having these restrictions imposed on it. Marvel never agreed to have those restrictions -- those restrictions imposed on it, right?

A. Are you asking me if it was bound in the technical contractual way?

Q. Marvel did not agree to be bound by those restrictions; I'm asking you that, without any technical legal anything. I'm asking, in those words, is that true?

A. You can agree to something by behavior.

Q. Is that true?

A. Yes.

Q. That Marvel did not agree to be bound by the restrictions?

A. I'm saying that the behavior of Marvel indicated, it did agree to be bound by these restrictions.

Q. Well, let's look in your answer to paragraph -- to question 5.

A. And that's good contract law, by the way.

Q. Look at the second paragraph of your answer to question 5. You say at the beginning, In its presentation, Perelman might have argued that the restrictions -- talking about the restrictions in the holding company indentures, right?

A. Yes.

Q. So Perelman might have argued that the restrictions needn't bother Marvel because Marvel was not agreeing to be bound by them; is that a true statement?

A. This -- what I'm trying to say here is what Mr. Perelman might have argued.

Q. So, if he had said to the board in his

argument that Marvel was not agreeing to be bound by the restrictions in the indentures, would that have been a true statement, to your understanding?

A. It depends when the presentation would be made.

Q. Before the issuance of the notes.

A. Oh, before any issuance of the notes. Yes, he could have said that.

Q. And it would have been true?

A. It would have been true.

Q. Now, after the issuance of the notes, he could have said that and it still would have been true, right, that Marvel had not agreed to be bound --

A. Well, I mean, we're arguing over the question of how one agrees.

Q. Using the language of your report.

A. Yeah. Well, I'm saying that the behavior of Marvel constituted a de facto acceptance of these obligations. That's what I've been saying, I think, consistently, and -- and -- and...

Q. If Marvel during this period of time, '93 and '94, '95, '96, if Marvel had been complying

with the restrictions in its own debt facilities, would that have constituted a de facto agreement to be bound by restrictions in indentures to which it was not a party?

A. No.

Q. Now, near the end of this first paragraph, you say, Even if the noteholders and the indenture trustee claimed that the best interest of the noteholders were the same as the best interest of Marvel, the fact would remain that this judgment, which is a matter of corporate law, was placed in the hands of Marvel's board of directors, would have been taken away from that board.

How so?

A. Because the -- the restrictions are on Marvel, which were critical to the issuance of the notes. Otherwise, there wouldn't be any covenants in the indenture, restrict the business that the board of Marvel can engage in and place the control of those restrictions in the hands of people who have no fiduciary duty to Marvel.

So it's a huge change from the board being able to pay off the bank term covenants by paying off that debt or refinancing it in one way

or the other, because they control the situation as directors representing the shareholders of Marvel.

In this case, those restrictions are under the control of the noteholders and the indenture. And those people have no fiduciary duty to the shareholders of Marvel or to Marvel itself. And so it's a huge shift in the power structure and in the control over the business of Marvel, and that's what I mean to be saying there.

Q. You're not saying that the board of Marvel had unilateral control over the restrictions contained in its debt facilities, are you?

A. I'm saying, they could get rid of them by refinancing. They can't get rid of the indenture covenants. In the note indenture covenants, they don't have any way of doing that.

Q. Right, because they're not a party to that contract.

A. No, I suppose they could pay off the notes.

Q. Didn't have any obligation to do so, did they?

A. No, and it would be an insane thing to do because they are paying off someone else's debt.

Q. And its someone else's debt because someone else was the one who agreed to be bound by the indenture?

A. Yes, well, someone else, yeah, monetized his asset.

Q. Now, but coming back to Marvel's board's control of the restrictions in Marvel's debt.

My point is that there would be someone else that would have a say in whether Marvel could refinance that debt, wouldn't there be?

A. No.

Q. The lender?

A. The lender -- the bank term -- the term bank loans could be repaid.

Q. With what?

A. With cash.

Q. From where?

A. Well, that's up to Marvel's board.

Q. Well, let's say they don't have the cash. You say refinance. I took that to mean they go out and borrow the money somewhere else and pay off the existing bank loan and get rid of the restrictions that way.

A. No, they could issue stock or they could

issue debt.

Q. Not if their debt said they couldn't do it without the board's consent, right?

A. Which debt?

Q. Without the bank's consent. If there were covenants in the bank debt that said Marvel couldn't go out and issue stock or incur other debt without the bank's consent, they couldn't do it without paying off the bank, right?

A. Oh, no, but why would they do it? I'm talking about a refinancing.

Q. Right.

A. I'm saying that they have -- the board has the power to find, to source some money and pay off the banks which held the power over these covenants.

Q. And it's entirely possible that the new source of financing would insist on the same or even more restrictive covenants as a condition of making the new loan. That's entirely possible, right?

A. It's not totally impossible.

Q. Okay. I'll take that formulation of it. So the board --

A. It would be totally impossible if they were issuing stock to derive the proceeds necessary to pay off the debt.

Q. What's that?

A. If they sold stock and -- the stockholder is not going to impose those covenants. That would be very strange.

Q. But if the bank had imposed a limitation on Marvel's ability to issue stock, the bank could tell them they can't do that, right?

A. No, no.

Q. Why not?

A. Because their bank's being taken out.

Q. Not if the bank says you can't issue stock and they have the right to say that.

A. No. If they -- the company has the right to prepay the debt, the bank debt.

Q. Maybe they do and maybe they don't.

A. I think they did.

Q. My only point, Mr. Longstreth, is that when you take the position that the board had unilateral control over the restrictions that applied to Marvel on account of its own debt, that's not entirely so because they do have to

comply with whatever their obligations are to the lender of the debt, whatever the bank -- the contract says, right?

A. They created the relationship and they can terminate it.

Q. Under the terms of the contract?

A. Yes.

Q. And they couldn't do that with respect to the indentures, right?

A. Right. That's the difference.

Q. Because they weren't a party to the contract. They had no control over what that contract said and whether that contract could be changed in any way, shape or form; isn't that true?

MR. FRIEDMAN: That's a compound question.

MR. CLARK: It certainly is.

MR. FRIEDMAN: So, let's ask one question at a time.

MR. CLARK: I'll keep that question and you can move to strike.

MR. FRIEDMAN: I object to the form of the question.

Q. So, isn't that true --

MR. FRIEDMAN: Just read back the question and we will get one at a time, please.

MR. CLARK: Read back the whole question.

THE WITNESS: I think I know the answer to the question.

MR. CLARK: I think you do, too.

(The question was read.)

A. No, it is not true.

Q. Now, in all of this work that you did, you didn't see a single contract, a document that you as a lawyer would give an opinion that it was a legally binding piece of paper whereby the Marvel or the Marvel directors agreed to restrict the board's exercise of business judgment on any matter in any way, did you?

A. The Marvel board?

Q. Yeah.

A. No.

Q. Now, in the second paragraph of the answer to question 5, after the second line there where you say, Marvel was agreeing -- was not agreeing to be bound, right, you go on to say, If

at some future time they proved disadvantageous to Marvel, they could simply refuse to comply.

The, they, being the negative covenants, right?

A. Yes. Where is that? Oh, I got you, yes. Yes.

Q. Did that time ever come where these things proved disadvantageous to Marvel, these covenants and the indentures that they weren't a party to?

A. Yes, yes.

Q. When was that?

A. Well, I don't know the earliest point, but on the record that I looked at, it occurred leading up to the December 12 board meeting.

Q. Was there ever a situation that you saw in the record, where Marvel sought to obtain financing from any source other than Mr. Perelman or his affiliates, okay? So put them to one side.

Marvel went out to some unaffiliated third party, sought to obtain financing and was unable to do so because of the covenants in these notes.

A. I don't know. What I do know is what

the -- what the minutes of that meeting and the one after it say.

Q. I appreciate that, but I would like -- you don't know, based on your review of the record that was provided to you by Mr. Friedman, whether or not Marvel ever sought financing from an unrelated unaffiliated third party and was unable to obtain financing because of these notes?

A. I don't know. But I mean, I can answer that question by telling you that the very powerful implication of the minutes is that they searched high and low for financing and couldn't find any. And why do I say that? I say that because people don't just venture into Chapter 11 for the fun of it.

Q. Well, you don't --

A. And that December 12 minutes says, Look, the only way we can get rid of these covenants is to go into Chapter 11. So, I mean if you're -- Mr. Perelman is much too smart a man to have ignored obvious financing opportunities that were kicking around somewhere.

Q. And are you aware that in all of these financing alternatives that may have been looked

at -- well, you don't know whether they were or not?

A. I don't.

Q. Let's assume that they were. Are you aware of any evidence to indicate that Marvel was unable to pursue any of those alternatives with unrelated third parties, not affiliates of Mr. Perelman, on account of anything in the note indentures?

A. No. But, look, if Andrews who's controlled by Perelman, says, I can't provide financing unless we can deal with these covenants, it's a fortiori case -- it's a stronger case as applied to any third party lender who he might have found.

Q. The majority looked at Mr. Icahn's -- however you want to caveat it -- proposal in the two letters in December and you saw no condition in there --

A. Due diligence.

Q. Let me finish.

A. I won't interrupt you again.

Q. You saw no condition in there that said that his offer was conditioned on any waiver of any

provisions of any note indentures; isn't that true?

A. Not in so many words, but there's the blanket condition of due diligence.

Q. Right. He is a holder of the notes that were directly subject to the indentures with reserving the right to conduct due diligence. And you think that might possibly cover looking for information about what restrictions arose from the indentures for the notes that he held, and maybe that would then lead to some condition in his proposal; is that what we are to gather?

A. I would tell you, as a lapsed lawyer, that those words cover anything and everything that he discovers through due diligence, whether he knew something about it ahead of time or not.

And, for example, if he found out that a waiver was impossible because the noteholder -- nobody knew who they were or where they were or how to solicit, that may be a new fact perhaps he didn't know, even though he might have known about the covenants in the note indenture.

Q. Now, on this topic of due diligence with Mr. Icahn, would you agree with me that if he were a member of the board of directors of Marvel, he'd

have an absolute legal right to take as much due diligence as he wanted to with respect to Marvel; he could get access to any information he wanted as a director, right?

A. Do you mean in connection with --

Q. As a director of a Delaware corporation.

A. But, if he were a director of a Delaware corporation, you're asking me, could he exercise due diligence?

Q. No, I'm asking a different question.

You're not a Delaware lawyer, right? You've not been admitted to the Bar in Delaware, correct?

A. All my career, I have given opinions on Delaware law.

Q. But you're not a member of the Delaware Bar?

A. No.

Q. But you have been giving opinions on Delaware law and you're very familiar with it, correct?

A. I used to be pretty familiar with it.

Q. Are you familiar with Section 220-D of the Delaware General Corporation Law?

A. Remind me what it says.

Q. It says that a director of a Delaware corporation has an absolute right to get any information he wants from the corporation about the corporation, its business and affairs. You understand --

A. Yes.

Q. -- and you've long understood that to be the law, right?

A. Yes.

Q. So, back to my question about Carl Icahn.

Were Mr. Icahn a director, he would be able to do all the due diligence he wanted with respect to any facts pertaining to Marvel, right?

A. Right.

Q. So, if Mr. Perelman, if Mr. -- my apologies to Mr. Perelman -- if Mr. Icahn, in fact, did become a director of Marvel, did have access to all that information, and yet never made a proposal to finance Marvel based on a waiver of any conditions or terms in the indentures for the holding company notes, would you agree with me that that indicates that those notes, those indentures

were not an impediment to a financing proposal, at least for Mr. Icahn; would you agree with that?

A. No.

Q. Okay. Why not? Why not?

A. Because when -- can we -- can we assume that he is a director?

Q. He was. He became a director of Marvel. He was on the board of directors for a period of several months in 1997. He had access to all the information he wanted. That's a fact. You can assume that to be true.

A. At the time he made the offer.

Q. He made other proposals while he was a director of Marvel. You can assume that to be true.

A. Well, '97 he went on the board?

Q. Yes, he did.

A. Well, aren't we talking about this '96?

Q. Well, now we're talking about '97.

A. Well, I was talking about this. I don't know anything about '97. I'm talking about the language subject to confirmatory due diligence.

Q. Are you aware that Mr. Icahn never made a proposal to Marvel to provide it with any

financing that on its face contained a condition related to a waiver of any terms of the indentures for the notes? Are you aware of that?

A. I don't know, but I don't think it's relevant to what you and I are trying to talk about.

Q. Now, in the last paragraph of your answer to question number 5, the first sentence you say --

A. The last paragraph?

Q. Last paragraph, first sentence. I would reflect on the fact that shortly before the first issue of notes occurred at a board meeting of Marvel on March 18, 1993, we amended Marvel's charter to increase its authorized capital stock, et cetera.

Who's we?

A. Well, I'm putting myself in the shoes of a director. So, we, the board.

Q. We means the people who were actually the board at that time?

A. That's correct. I'm not too sure why I worded it that way.

Q. I wasn't either.

A. I was trying to get into the role.

Q. Into the head. That's okay.

Your answers to question 6 and 7, first paragraph. First of all, I would be concerned about the bet-the-ranch nature of accepting restrictions.

When you talk about accepting restrictions, who accepted what restrictions?

A. The board.

Q. Of?

A. Marvel accepting restrictions on its business.

Q. And --

A. You understand, this is a negotiation we're now having. I mean, we've moved -- we've moved to the hypothetical situation of Perelman telling us what he wants to do.

Q. Fair enough. Let's go on.

Accepting restrictions depending on future events, I could not reasonably anticipate, might so restrict Marvel as to cause its demise.

That's the hypothetical, right?

A. That's what I mean by bet the ranch.

Q. Right. But that's the hypothetical.

That whole sentence is your hypothetical --

A. That's right.

Q. But the next sentence isn't hypothetical, right? The next sentence says, With hindsight, of course, this is precisely what happened.

You're stating as a matter of fact that Marvel's demise was caused by some restrictions that have been accepted by somebody. Is that a fair reading of that paragraph?

A. Yes.

Q. Okay. So, let's go back to the accepting restrictions. Who accepted what restrictions?

A. Well, in this hypothetical --

Q. Well, no, no, no. I want to deal with the facts as you understood them. You say that what happened to Marvel is that as a result of accepting restrictions, Marvel's demise was brought about.

I want to know who accepted them and what the restrictions were.

A. Yeah. Well, the restrictions are the negative covenants that are contained in the note

indentures. And the person who accepted them is with the board and management of Marvel.

Q. Okay.

A. And that acceptance was what you and I have been sparring about.

Q. Just chatting.

A. Yeah, chatting.

Q. Okay. But you know of no document, piece of paper, video --

A. No. Well, wait. I'm sorry, finish your question.

Q. Let me finish the question. You know of no document, piece of paper, contract, video, electronic recording, any other physical thing which evidences the acceptance of these restrictions by the Marvel board, correct?

A. No.

Q. Incorrect?

A. Incorrect.

Q. Okay. What's the piece of paper by which Marvel accepted these --

A. All the SEC filings I've been referring to.

Q. Oh, okay. Pull them out, let me see

where it says Marvel accepted the restrictions, those words.

A. No, there are no words.

Q. Okay.

A. If you're talking about precise words, those words are not there.

Q. Mr. Longstreth, I'm talking about your precise words. Did you see any piece of paper, any audio, visual recording, anything else in the record that said, in your words, that Marvel had accepted any restrictions in the notes; you didn't see that?

MR. FRIEDMAN: Objection. Asked and answered.

A. I'm saying that the behavior of the management of Marvel and the board of Marvel, together with various filings, fairly construed in the totality, evidence, a corporate acceptance of these covenants. And I've said that in many different ways, but that's what I am saying.

And I believe that any fair reading of the totality of the record would lead, you know, a reasonably careful thinking person to conclude that this company accepted the covenants that its

controlling shareholder agreed to impose upon it.

Q. But you didn't see anything that said Marvel accepts the restrictions?

A. Not those precise words. We're talking about agreement by behavior, by a course of conduct. That's what you litigators call it.

Q. Now, the third paragraph to your answer to these two questions, near the end --

A. Third paragraph.

Q. Yeah. Second to last sentence, it says, These advisors. By that, you're referring to independent counsel --

A. Yeah.

Q. -- and bankers who you would have retained for your independent committee to negotiate over the acceptance of these restrictions, right?

A. Right.

Q. These advisors would serve Marvel through its independent directors in determining what kind of benefit, if any, in what size, would constitute a reasonable, and to the independent directors, acceptable quid pro quo for allowing the restrictions to be imposed.

My question -- I just want to make sure you have no expert opinion on what the appropriate quid pro quo for Marvel's acceptance of these restrictions would have been, correct?

A. Correct. No expert opinion you said?

Q. Right. That's how you testified. You don't know anything as a matter of fact. You weren't aware of all of this as it was happening, right?

A. Well, it didn't happen.

Q. No, no. I'm asking, you had no actual knowledge of these events before you were retained as an expert in this case?

A. Oh, no.

MR. CLARK: Off the record.

THE VIDEOGRAPHER: The time is 2:12 p.m., April 13, 2006. This concludes Tape Number 2 of the videotaped deposition of Mr. Bevis Longstreth.

(A recess was taken.)

THE VIDEOGRAPHER: The time is 2:19 p.m. April 13, 2006. This marks the beginning of Tape Number 3 of the videotaped deposition of Mr. Bevis Longstreth.

Q. Mr. Longstreth, in one of your recent answers in the last half hour, 45 minutes, you referred to yourself as a lapsed lawyer. What did you mean by that?

A. Well, I haven't practiced law since 19 -- since 1994.

Q. Are you still a member of the Bar?

A. Yes.

Q. In what jurisdictions?

A. New York.

Q. Just New York?

A. Yeah. I taught at Columbia for five years. I've taught law and I've been an expert witness, I guess, as we have gone over. But I haven't actually practiced law.

Q. And you talked a lot about Marvel's acceptance of the restrictions in the note indentures by, I think you said by conduct, by conduct of the management of Marvel, conduct of the board of Marvel?

A. Right.

Q. So is it your view that through this conduct, Marvel became legally bound as a party to the indentures and the restrictions in the

indentures?

A. Well, we talked about that before.

Q. And what was the answer?

A. In a technical sense, I don't think they were legally bound.

Q. In a nontechnical sense, were they legally bound?

A. The course of conduct that they engaged in constituted acceptance, and the consequences of trying to unaccept what they had accepted could have been, in my judgment, severe, because among the ways in which they accepted these covenants were filings with the SEC.

And in other ways they accepted them was in the implication to the noteholders that they would -- they would agree to them, they would comply with them. They weren't going to resist them. They didn't consider themselves free to ignore them.

So all that course of conduct would lay a basis for their running into legal difficulty if they ignored them.

Q. Let me --

A. That's my conclusion.

Q. Let me ask it this way. Based on this acceptance by conduct that you testified to, is it your opinion that if the indenture trustee and the noteholders had brought an action against Marvel for breach of contract, not tortuous interference or anything else, breach of contract because it didn't adhere to these negative covenants in some way, shape or form, that they would have been entitled to a judgment, assuming that Marvel hadn't adhered?

A. Yes. If that's all they did, perhaps. I just -- I would have to really study that.

Q. So, it's, at least as you sit here right now, it is not your unequivocal view that Marvel had become legally bound by the terms of the holding company indentures as a result of this conduct; is that fair?

A. It's -- if you mean legally bound in the sense that in that case we just hypothesized, a contract case, is it clear to me that Marvel would be liable, I can't say that without --

Q. Let me try it another way.

A. Okay.

Q. If Marvel had, hypothetically -- you're

an expert, so I can ask these things -- if Marvel had gone out in 1996 and issued a whole bunch of stock, common stock, diluted Mr. Perelman down to, pick a number, 10 percent, okay, clearly contrary to the terms of the indentures, right, if that had occurred, and the indenture trustee and the noteholders sued the holding companies on the contract to enforce their rights, they would be entitled to a judgment for whatever the contract said their relief was, right? Breach of contract --

A. Breach of the contract, yeah.

Q. They'd be entitled to a judgment, right? Okay. Same set of facts, except that they go through Marvel. Are they entitled to a breach of contract judgement and remedy against Marvel?

A. I don't know. I -- I -- I do know that there's a case there. Whether it's a highly probable successful case, I don't know. I -- I -- I -- I think there's a case there based upon acceptance of the conditions and an acting in reliance upon that acceptance.

Q. And what's the case? What's the cause of action and the basis for relief of this case

that you are talking about; tort, contract --

A. That the course of conduct by Marvel induced reliance on the noteholders, because it's my view that the noteholders would not have lent the money to Mr. Perelman without the covenants.

Q. You're no expert on finance; we've established that, right?

So that's not an expert opinion you're offering, right?

A. It's an expert opinion based upon many, many, many negotiations and that people do not agree to covenants they don't have to agree to.

Q. Well, it's not an expert opinion that you bothered to put into your expert report, is it? There's no --

A. No, we didn't talk about -- I wasn't asked to consider it.

Q. I want to go back to --

A. But you're asking me to consider it.

Q. I want to go back to what the legal result, you, as an expert on these matters, what the legal result of this acceptance by conduct was.

Is there a contract between Marvel and the noteholders as a result of this acceptance by

conduct?

A. I'm saying there could be.

Q. You are?

A. Yes. I mean, there could be.

Q. Great. You've answered my question.

MR. CLARK: I have no further questions. Thank you very much.

MR. FRIEDMAN: No questions.

MR. CLARK: We're done. Thank you, Mr. Longstreth.

THE VIDEOGRAPHER: The time is 2:27 p.m., April 13, 2006. This concludes the videotaped deposition of Mr. Bevis Longstreth.

(Time noted: 2:27 p.m.)

_____

BEVIS LONGSTRETH

Subscribed and sworn to before me
this ____ day of _____, 2006.

_____

C E R T I F I C A T E

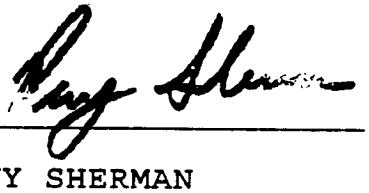
STATE OF NEW YORK)
: ss.
COUNTY OF KINGS)

I, PENNY SHERMAN, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That BEVIS LONGSTRETH, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of April, 2006.



PENNY SHERMAN

INDEX

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ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

----------x

RONALD CANTOR, IVAN SNYDER and JAMES A. SCARPONE, as TRUSTEES OF: THE MAFCO LITIGATION TRUST,

Plaintiffs,

Civil Action No. 97-586

-against-

RONALD O. PERELMAN; MAFCO HOLDINGS, INC., MacANDREWS & FORBES HOLDINGS INC.; ANDREWS GROUP INCORPORATED; WILLIAM C. BEVINS; DONALD G. DRAPKIN,

Defendants.

----------x

Videotaped Deposition of WILLIAM H. PURCELL, taken in the above-entitled matter before RICHARD GERMOSEN, a Certified Shorthand Reporter, Registered Professional Reporter, Certified Realtime Reporter and a Notary Public within and for the States of New York and New Jersey, taken at the offices of SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP, 4 Times Square, New York, New York 10036, on October 29, 2002, commencing at 10:05 a.m.

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DANIELLE CAPAWANNA, Videographer

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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Defendants.

Videotaped Deposition of WILLIAM H. PURCELL, taken in the above-entitled matter before RICHARD GERMOSEN, a Certified Shorthand Reporter, Registered Professional Reporter, Certified Realtime Reporter and a Notary Public within and for the States of New York and New Jersey, taken at the offices of SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP, 4 Times Square, New York, New York 10036, on October 29, 2002, commencing at 10:05 a.m.

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profile or the more volatile the business or the less tangible assets as a general statement they recommend less debt in that capital structure. They don't then pinpoint numbers.

Q. I understand that.

My question is a little more specific. Can you give me with respect to any academic literature or empirical studies or any business literature the names of the authors and the titles of the references that say what you --

A. I believe some of them are footnoted in either the first report or the second report. As I testified earlier I took some of the length out, but one of my favorite quotes is Warren Buffett who most people know who he is and those that don't know Modigliani and his famous quote is that people who feel that a lot of debt helps them focus on running the business better because they are more focused on their risk are not very smart people because the roads of business are filled with potholes and you cannot possibly miss them all.

Q. Yes, but there is --

seven months ago, but that's to my recollection how we -- how this came about the document itself and what was in it.

Q. What is the logic or the rationale that underpins that number in your mind?

A. Well, you had had Mr. Gittis in effect admit in his deposition that neither the Andrews Group nor anybody else in his view would put meaningful new equity into Marvel with the existence of that provision in place without waivers from the holding company bondholders and, in fact, they couldn't get their waiver and Andrews withdrew from the offer and that was rather concrete evidence, if you will, if that's the proper term to conclude that, which I had already believed anyway that the existence of these covenants in the holding company issues was detrimental in many ways as I talked about before to Marvel, but in the last stages of his life also prevented it from getting the infusion that could have been possible to keep it alive. So it was the coup de grace if you will.

Q. And the infusion to keep it alive

Special Meeting of the Board of Directors
of Marvel Entertainment Group, Inc.
held at 35 East 62nd Street,
New York, New York
on December 12, 1996, at 10:00 A.M. New York time

Present in person:

Ronald O. Perelman
Donald G. Drapkin
Michael J. Fuchs
Morton L. Janklow
Scott C. Marden
Scott M. Sassa
David J. Schreff

Present by telephone:

William C. Bevins
Frank Gifford
E. Gregory Hookstratten
Stan Lee
Terry C. Stewart
Kenneth Ziffren

Absent:

Quincy Jones

Present by invitation:

Thomas Balliett of Kramer, Levin Naftalis & Frankel
Thomas Constance of Kramer, Levin, Naftalis & Frankel
Daniel Celentano of Bear Stearns & Co. Inc.
Irwin Engelman, Executive Vice President and Chief Financial Officer of MacAndrews & Forbes Holdings Inc.
Marcia Goldstein of Weil Gotshal & Manges LLP
Steven R. Isko, Vice President, Legal Affairs and Secretary of the Corporation
Bobby G. Jenkins, Executive Vice President and Chief Financial Officer of the Corporation
Barry F. Schwartz, Executive Vice President and General Counsel of MacAndrews & Forbes Holdings Inc.
Paul E. Shapiro, Executive Vice President and General Counsel of the Corporation

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Mr. Perelman presided and Mr. Isko recorded the minutes of the meeting.

Notice of the Meeting has been duly given in accordance with the By-Laws of the Corporation. The members of the Board who participated by means of conference telephone communications equipment and video conference communications equipment could hear all of the other meeting participants and could be heard by them.

Update on Restructuring

Mr. Perelman outlined the status of the proposed financial restructuring of the Corporation, including the proposal by Andrews Group Incorporated ("Andrews Group") to invest $350 million in exchange for 80.1% of the outstanding shares of the Corporation on a fully diluted basis, the proposed acquisition of the Class A common stock of Toy Biz, Inc. ("Toy Biz") not owned by the Corporation and the additional credit facilities being sought to provide the Corporation with the liquidity it requires. Mr. Perelman stated that the bonds issued by parent companies of the Corporation have generally traded out of the hands of the traditional institutional holders and into the hands of "distress" funds and other holders. As of today, the present bondholders have not organized and, therefore, Andrews Group has not been able to negotiate with the bondholders for their consent to the proposed investment by Andrews Group in the Corporation. Mr. Perelman stated that a delay in implementing the restructuring would have a negative impact on the Corporation's liquidity needs. Mr. Perelman stated that, as a result, one option being considered in order to consummate the financial restructuring of the Corporation is the commencement of a case under Chapter 11 of the bankruptcy code.

Following Mr. Perelman's comments, Mr. Bevins reviewed the status of the proposed equity investment by Andrews Group in the Corporation, the proposed acquisition of the Class A common stock of Toy Biz not currently owned by the Corporation and the additional credit facilities being sought from the Corporation's lending group, all to take effect upon consummation of such transactions. Mr. Bevins discussed a proposal that had been received from a High River Limited Partners, a purported bondholder controlled by Carl Icahn, and reviewed the discussions between Andrews Group and Carl Icahn, a representative of such bondholder and the viability of such bondholder's proposal. Mr. Bevins then discussed the impact on the Corporation's business of a delay in implementing the restructuring in light of the Corporation's liquidity needs. Mr. Bevins reviewed with the Board the Corporation's ability to obtain financing during a reorganization case and the status of discussions between the Corporation and its agent

bank concerning such financing. Mr. Bevins stated that a reorganization case with a "debtor in possession" financing facility would allow the Corporation to obtain necessary liquidity for its working capital and investment spending requirements pending the completion of its financial restructuring. Mr. Schwartz provided an update on the litigation filed in connection with the propsed restructuring.

Messrs. Perelman, Bevins and Schwartz responded to questions regarding the Corporation's restructuring and possible courses of actions.

The Board was informed that no resolution was being presented at this time and no vote was needed yet. However, the Board was alerted to the fact that prompt Board action might be needed in the near future.

Adjournment

There being no further business to come before the Meeting, a motion to adjourn the Meeting was made, seconded and passed, and the Meeting was thereupon adjourned.

Secretary

Special Meeting of the Board of Directors
of Marvel Entertainment Group, Inc.
held at 35 East 62nd Street,
New York, New York
on December 26, 1996, at 4:00 P.M. New York time

Present in person:

Donald G. Drapkin
Scott C. Marden
Scott M. Sassa
Terry C. Stewart

Present by telephone:

Ronald O. Perelman
William C. Bevins
Frank Gifford
Morton L. Janklow *
E. Gregory Hookstratten *
Stan Lee
David J. Schreff
Kenneth Ziffren *

Absent:

Michael Fuchs
Quincy Jones

Present by invitation:

Thomas Balliett of Kramer, Levin, Naftalis & Frankel
Thomas Constance of Kramer, Levin, Naftalis & Frankel
Daniel Celentano of Bear Stearns & Co. Inc.
Irwin Engelman, Executive Vice President and Chief Financial Officer of MacAndrews & Forbes Holdings Inc.
Edmund J. Feeley, President and Chief Operating Officer of Fleer Corp.
Marcia Goldstein of Weil Gotshal & Manges LLP
Steven R. Isko, Vice President, Legal Affairs and Secretary of the Corporation
Bobby G. Jenkins, Executive Vice President and Chief Financial Officer of the Corporation
Harvey Miller of Weil Gotshal & Manges LLP
Gordon Rich of CS First Boston Corporation
Andrew Sammett of Bear Stearns & Co. Inc.
Paul E. Shapiro, Executive Vice President and General Counsel of the Corporation
Andrew Stuhlberger of CS First Boston Corporation
Robert Wiesenthal of CS First Boston Corporation

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* Indicates member of the Special Committee

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Mr. Perelman presided and Mr. Isko recorded the minutes of the meeting.

Notice of the Meeting was duly given in accordance with the By-Laws of the Corporation. The members of the Board who participated by means of conference telephone communications equipment could hear all of the other meeting participants and could be heard by them.

Approval of the Minutes of Meeting of the Board of Directors.

The first order of business to be considered by the Board was the approval of the minutes of the meetings of the Board of Directors held on December 4, 1996 and December 12, 1996. Draft minutes for these meetings had been provided to each Director for review and comment prior to the Meeting.

Upon motion duly made and seconded, the minutes, as submitted, were unanimously approved.

Consideration of Commencement of a Reorganization Case under Chapter 11 of the United States Bankruptcy Code.

Mr. Perelman stated that the first order of business was the consideration of the commencement of a chapter 11 reorganization on behalf of the Corporation under the United States Bankruptcy Code. Mr. Perelman stated that the financial situation of the Corporation and its subsidiaries had deteriorated significantly to the point that it was currently projected that the Corporation would run out of cash during the early part of January, 1997. In that perspective and the inability to expeditiously effect a restructuring of the financial obligations of certain parent companies of the Corporation that would enable the recapitalization of the Corporation, it was appropriate to consider the commencement of a case under chapter 11 of the United States Bankruptcy Code on behalf of the Corporation. Mr. Perelman stated that a chapter 11 reorganization case would provide the means pursuant to which the proposed investment in the Corporation by Andrews Group, Incorporated ("Andrews Group") of $365 million could be effectuated.

Mr. Perelman introduced Mr. Bevins, who described the principal terms of a proposed investment in the Corporation by Andrews Group of $365 million in exchange for shares of common stock of the Corporation ("Company Common Stock") representing 80.8% of the outstanding shares of the Corporation after giving effect to such investment, representing a per share purchase price of approximately $0.86 per share (the "Purchase Price"). Mr.

Bevins stated that such equity investment would be used to acquire the equity of Toy Biz, Inc. ("Toy Biz") not owned by the Corporation pursuant to a Stock Purchase Agreement with each of Isaac Perlmutter and Avi Arad and a Merger Agreement between Andrews Group and Toy Biz (the "Merger Agreement") which are to be assigned to the Corporation as part of the consummation of the proposed Plan of Reorganization. Mr. Bevins reviewed with the Board the terms of the Stock Purchase Agreements for the acquisition of Messrs. Perlmutter and Arad's shares of Class A Common Stock of Toy Biz (the "Class A Common Stock") at a purchase price of $14 per share in cash and a $40 million promissory note bearing interest at the five year Treasury rate representing approximately $3 per share and the proposed performance bonus plan to be implemented for Messrs. Perlmutter, Arad and Ahearn, and the terms of the Merger Agreement whereby the Class A Common Stock of Toy Biz held by the public would be acquired for $22.50 per share. Mr. Bevins stated that if approved by the Corporation's Board, the Stock Purchase Agreements and the Merger Agreements would be assigned by Andrews Group to the Corporation as part of the proposed Plan of Reorganization in exchange for approximately 427.3 million shares of common stock of the Corporation to be issued to Andrews Group or its designee. Mr. Bevins then reviewed with the Board the $160 million new Toy Biz credit facility with the Corporation's lenders which will fund working capital and strategic investment needs of the Corporation and its subsidiaries. Mr. Bevins also reviewed with the Board the difficulties the Corporation has encountered in its operations in the current environment, the resulting cash liquidity problems and stated that in his opinion the commencement of a chapter 11 case by the Corporation should enable the reorganization of the Corporation's financial structure and consummation of the proposed recapitalization on a timely basis.

Mr. Perelman then introduced Gordon Rich of CS First Boston Corporation ("First Boston"), financial advisor to the Special Committee. Mr. Rich reviewed the analysis conducted by First Boston on the fairness of the Purchase Price. Mr. Rich reviewed with the Board a brief history of the Corporation and a historical financial performance, noting that the Corporation does not presently generate, nor will it in the 1997 fiscal year generate, sufficient cash to cover its interest expense. Mr. Rich reviewed with the Board the various fundamental analyses performed by First Boston and the breakup analysis of the Corporation conducted by First Boston, and the assumptions underlying First Boston's value analyses, noting that the value ascribed to Fleer Corp. in the breakup analysis might be too high. Mr. Rich then delivered his oral opinion that the Purchase Price to be paid by Andrews Group was fair from a financial point of view to the Corporation. Mr. Rich then responded to questions.

Mr. Perelman thanked Mr. Rich for his presentation and then introduced Mr. Harvey R. Miller of Weil, Gotshal & Manges LLP, Special Counsel to the Corporation. Mr. Miller described the process for the commencement of a chapter 11 case by the Corporation and proposed schedule of hearings and events that would occur subsequent to the commencement date. Mr. Miller stated that concurrently with the commencement of the chapter 11 case, the Corporation and its subsidiaries would file with the Bankruptcy Court the proposed plan of reorganization incorporating the Andrews Group proposal, as well as a proposed disclosure statement to be approved by the Bankruptcy Court and thereafter used to solicit acceptance of the proposed plan of reorganization. He reviewed with the Board the list of the entities, including the Corporation, that would commence cases under chapter 11 and, generally, the documents that would be filed in relation to each chapter 11 case. Mr. Miller then reviewed with the Board the fiduciary duties of directors and officers in connection with the commencement and administration of a chapter 11 case for the Corporation. Mr. Miller then responded to questions.

Mr. Perelman then introduced Mr. Daniel Celentano of Bear Stearns & Co. Inc., financial advisor to the Corporation ("Bear Stearns"). Mr. Celentano reviewed with the Board the analyses conducted by Bear Stearns in connection with the filing of the chapter 11 case by the Corporation. Mr. Celentano reviewed with the Board the reorganization value analysis, the liquidation value analysis and the analysis of feasibility of the proposed Plan of Reorganization conducted by Bear Stearns, the assumptions underlying Bear Stearns' analyses and Bear Stearns conclusions, including that the reorganization value of the Corporation absent the proposed acquisition of Toy Biz or payment of debt is zero, that the reorganization value of the Corporation assuming the consummation of the investment by Andrews Group and the acquisition of Toy Biz on the terms proposed is between $0.36 and $0.63 per share, that under the liquidation analysis there would be no proceeds available for the common stock holders of the Corporation and that under the feasibility analysis the Corporation would be not able to pay its obligations as they become due. Mr. Celentano then responded to questions.

Mr. Perelman stated that copies of the Board presentations prepared by First Boston and Bear Stearns would be available to any Director and may be obtained by request to the Secretary of the Corporation.

Following the presentation by Mr. Bevins, First Boston and Bear Stearns, there was a discussion among the directors.

After motion duly made and seconded, the following resolutions were unanimously adopted:

WHEREAS, the Board of Directors acknowledges the liquidity needs of the Corporation and that based on current expectations, within approximately ten days the Corporation would not have sufficient liquidity to operate; and

WHEREAS, there is no feasible alternative to the transactions contemplated by the proposed investment by Andrews Group in the Corporation pursuant to the Acquisition Agreement, the proposed acquisition of Toy Biz, pursuant to the Arad Stock Purchase Agreement and Perlmutter Stock Purchase Agreement (each as defined below) and the Merger Agreement and the proposed $160 million Toy Biz credit facility for the Corporation to restructure its capital structure in order for the Corporation to operate; and

WHEREAS, the Board has considered the desirability and feasibility of a restructuring of the indebtedness and other obligations, organizational structure and ownership of the Corporation, such that, among other things, the business of the Corporation would be combined with that of Toy Biz and, in connection therewith, the Corporation would issue to Andrews Group a number of shares of Company Common Stock (or its equivalent) that will constitute 80.8% of the issued and outstanding shares of Company Common Stock after giving effect to such issuance; and

WHEREAS, Andrews Group has entered into the Stock Purchase Agreements, each dated as of November 20, 1996, with Isaac Perlmutter, Isaac Perlmutter, T.A. and Zib, Inc. and Avi Arad (collectively, the "Toy Biz Selling Stockholders") with respect to the purchase of their respective shares of the Class A Common Stock of Toy Biz (the "Perlmutter Stock Purchase Agreement" and the "Arad Stock Purchase Agreement," respectively); and

WHEREAS, Andrews Group has reached agreement with Toy Biz's Special Committee to buy the Series A Preferred Stock and the publicly held shares of Class A Common Stock and of Toy Biz for the price and on substantially the terms set forth in the Merger Agreement; and

WHEREAS, the Corporation has negotiated with Andrews Group the terms and conditions upon which the Corporation will issue and sell Company Common Stock to Andrews Group, and it is anticipated that the consideration for any such sale may be paid by Andrews Group in the form of (i) cash, (ii) shares of the issued and outstanding Class A Common Stock of Toy Biz not already owned by the Corporation or (iii) a combination of the foregoing; and

WHEREAS, in the event that Company Common Stock is issued to Andrews Group in exchange for cash consideration, the Corporation will accept an assignment of the rights and assume the

obligations of Andrews Group pursuant to its agreements with Toy Biz and the Toy Biz Selling Stockholders; and

WHEREAS, the Corporation is negotiating with Andrews Group and other parties in interest the principal terms for restructuring the indebtedness and ownership of the Corporation and acquiring Toy Biz, and management has reviewed such transactions with the Board in reasonable detail; and

WHEREAS, the Board has requested, and management and the Corporation's financial advisor have made presentations to the Board with respect to the proposed issuance of Company Common Stock to Andrews Group and the proposed acquisition of Toy Biz; and

WHEREAS, the Board has considered such presentations and the circumstances confronting the Corporation; and

WHEREAS, management has recommended to the Board (i) the commencement of a voluntary case by the Corporation for reorganization under the provisions of chapter 11 of title 11, United States Code, as hereinafter set forth and, in connection therewith, (ii) the approval of the issuance of shares of the Company Common Stock to Andrews Group, as hereinafter set forth, and (iii) the acquisition of Toy Biz, as hereinafter set forth;

NOW, THEREFORE, BE IT:

RESOLVED, that, in the judgment of the Board, it is desirable and in the best interests of the Corporation that the Corporation and certain of its subsidiaries each commence a Chapter 11 case by filing a voluntary petition seeking reorganization (the "Reorganization") under the provisions of chapter 11 of title 11, United States Code (the "Bankruptcy Code"); and

RESOLVED, that the appropriate officers of the Corporation be and each hereby is, authorized and empowered on behalf of, and in the name of, the Corporation to execute and verify or certify a petition under chapter 11 of the Bankruptcy Code and to cause the same to be filed in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") at such time as said authorized officer executing the same shall determine; and

RESOLVED, that the appropriate officers of the Corporation be, and they hereby are, authorized and empowered on behalf of, and in the name of, the Corporation to execute and file all petitions, schedules, lists, and other papers and to take any and all action that any of the authorized officers may deem necessary, proper or desirable in connection with the chapter 11 case, with a view to the successful prosecution of the case; and